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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

In the Matter of the Suspension)
or Revocation of the License of)

Administrative Action

ROBERT A. GABER, D.M.D.)

FINAL DECISION

To Practice Dentistry in the)
State of New Jersey)

AND
ORDER

This matter was opened to the New Jersey State Board of Dentistry (hereinafter, "Board") pursuant to the terms of a Consent Order filed December 1, 1988. The Consent Order provided for a hearing in mitigation of penalty before the Board based on Dr. Robert Gaber's (hereinafter, sometimes "respondent") admission that he had been convicted of crimes of moral turpitude and/or crimes relating adversely to the practice of dentistry in violation of N.J.S.A. 45:1-21(f).

PROCEDURAL HISTORY

This matter originally came to the Board's attention upon receipt of information that on April 11, 1987, Dr. Gaber was arrested and charged with having committed a sexual assault upon a patient. Based on that information as well as on an inspection of Dr. Gaber's office on April 15, 1987 which revealed possible unhygienic conditions, Dr. Gaber entered into an Interim Consent Order with the Board on June 3, 1987. In part the June 3, 1987 Interim Consent Order provided that Dr. Gaber was not to perform any dental service or operation on any patient unless an adult third party was physically present in the room. The terms of the June 3, 1987 Interim Consent Order were extended

by Orders dated September 8, 1987, December 7, 1987 and February 29, 1988.

On December 1, 1988, Dr. Gaber entered into a Consent Order with the Board. The December 1, 1988 Consent Order recited that on or about September 23, 1988, a Judgment of Conviction and Order for Commitment were entered in New Jersey Superior Court, Monmouth County, wherein Dr. Gaber was found guilty by a jury of one count of sexual assault, a second degree crime, in violation of N.J.S.A. 2C:14-2c(2) and one count of criminal sexual contact, a fourth degree crime, in violation of N.J.S.A. 2C:14-3(b). By way of the Consent Order, Dr. Gaber admitted that the crimes of which he was convicted are crimes of moral turpitude and/or crimes relating adversely to the practice of dentistry which provide grounds for the suspension or revocation of his license to practice dentistry pursuant to N.J.S.A. 45:1-21(f). Finally, the Consent Order provided that counsel for Dr. Gaber would be afforded the opportunity to present documentation and oral argument in mitigation of penalty at a hearing of the Board scheduled for that purpose.*

MITIGATION HEARING

A hearing in mitigation of penalty was held on January 4, 1989. Dr. Gaber was represented by Amos Gern, Esq. The Attorney General of New Jersey appeared through Kathy Rohr, Deputy Attorney

*In the December 1, 1988 Consent Order, Dr. Gaber waived his right to personally appear before the Board for a hearing.

General. No witnesses were presented either by Dr. Gaber or by the Attorney General. The following documents were submitted as exhibits by agreement of the parties:

- S-1 Indictment in State of New Jersey
v. Robert A. Gaber
- S-2 Letter dated August 19, 1988 from
Sally S. Scheidmantel of the Adult
Diagnostic and Treatment Center to the
Honorable Judge Stamelman together
with a report prepared by Mark Frank,
Ph.D., Principal Clinical Psychologist,
Adult Diagnostic and Treatment Center
concerning Robert Gaber.
- S-3 Letter dated May 16, 1987 from
Jeffrey C. Fracher, Ph.D. to
Amos Gern, Esq. concerning Robert A.
Gaber.
- S-4 Curriculum Vitae of Jeffrey Carter
Fracher dated September, 1986.
- S-5 Psychological Evaluation of Robert A.
Gaber, D.D.S. prepared by Frank J. Dyer,
Ph.D. (date of examination: 1/24/87).
- S-6 Letter dated July 14, 1988 from
Jeffrey C. Fracher, Ph.D. to Amos Gern,
Esq. concerning Robert A. Gaber.
- S-7 Letter dated May 9, 1988 from Marvin
J. Ladov, D.D.S., to Amos Gern, Esq.
concerning State of New Jersey v.
Dr. Robert Gaber.
- S-8 Curriculum Vitae of Marvin J. Ladov
dated March 1987
- S-9 Letter dated May 11, 1988 from
Robert J. Pandina, Ph.D. to Amos Gern,
Esq. concerning State of New Jersey
v. Robert Gaber.
- S-10 Curriculum Vita of Robert J. Pandina.

- S-11 Letter of June 21, 1988 from Amos Gern to Debra Casadonte, Assistant Monmouth County Prosecutor enclosing "the substance of an oral report given by Dr. Robert Pandina".
- S-12 Letter dated December 24, 1987 from Karthia Ramachandran, M.D., entitled Addendum to Previously-Transcribed History and Findings on Laurie Garner, April 9, 1987.
- S-13 Undated letter from Dr. Robert A. Gaber to The Honorable Judge Lawrence Stammelman (sic).
- S-14 Letter dated July 23, 1988 from Mrs. Elaine Gaber to The Honorable Judge Stammelman (sic).
- S-15 Six page typewritten document entitled "Biography; Robert A. Gaber".
- S-16 Undated memorandum from Jeanneine Gabriel, Case Supervisor to Honorable Laurence C. Stamelman, J.S.C. concerning Robert Gaber together with memorandum dated September 6, 1988 from Thomas McKnight, Principal Probation Officer I to Honorable Laurence C. Stamelman concerning Robert Gaber.
- S-17 Order for Commitment dated September 23, 1988 in State of New Jersey v. Robert Gaber signed by Laurence C. Stamelman, J.S.C.
- S-18 Letter dated December 6, 1988 from Amos Gern, Esq. to Kathy Rohr, Deputy Attorney General concerning Robert A. Gaber. This packet of material includes twenty (20) letters of reference from friends, patients and professional colleagues of Robert A. Gaber.
- S-19 Letter dated December 20, 1988 from Amos Gern, Esq. to Kathy Rohr, Deputy Attorney General together with a letter dated December 9, 1988 from Robert A. Gaber, D.M.D. to the members of the New Jersey State Board of Dentistry.

- S-20 Letter dated December 1, 1988 from Amos Gern, Esq. to Kathy Rohr, Deputy Attorney General concerning Robert A. Gaber.
- S-21 Excerpt from the pre-sentence investigation of Robert Gaber (pages 4, 4A, 5, 5A, 6, 6A and 6B).
- S-22 Nine (9) page emergency room record for Laurie Garner dated April 9, 1987 from Bayshore Community Hospital, Holmdel, New Jersey.

Amos Gern presented argument in mitigation of penalty on behalf of Dr. Gaber. Mr. Gern advised the Board that Dr. Gaber is presently incarcerated at the Mid State Correctional Facility where he is serving a four year sentence for his conviction of sexual assault and criminal sexual contact. Dr. Gaber will be eligible for parole in or about October of this year (1989). Mr. Gern urged the Board to not revoke Dr. Gaber's license, but rather to impose a suspension with whatever conditions were necessary. Mr. Gern grounded this request on several factors which he discussed with the Board. Initially, Mr. Gern pointed out that the Judge who sentenced Dr. Gaber after his conviction found that the mitigating factors outweighed the aggravating factors and therefore sentenced Dr. Gaber for a crime one degree lower than the one for which he was convicted (Dr. Gaber was convicted of a second degree crime and was sentenced as if it were a third degree crime). Mr. Gern also advised the Board that Dr. Gaber continues to receive therapy, over the telephone, while in prison. Additionally, Mr. Gern argued that the incident which resulted in Dr. Gaber's

conviction was an isolated incident with little chance of repetition and resulted from a lapse in judgment on Dr. Gaber's part and a misperception of the situation (Mr. Gern based this argument on several psychological evaluations entered into evidence at the hearing). Finally, Mr. Gern argued several of the same defenses raised in the criminal proceeding: e.g. that the victim was not incapacitated (one of the essential elements of the crimes of which Dr. Gaber was convicted) and that the victim's intoxication was not caused by Dr. Gaber (Mr. Gern acknowledged, however, that the jury in the criminal case, by finding Dr. Gaber guilty, did not accept these defenses).

The Deputy Attorney General argued that the facts of this incident are as the jury found them to be by returning a verdict of guilty on both counts; i.e., that Dr. Gaber committed the crimes of sexual assault and criminal sexual contact by his conduct while the victim was one whom Dr. Gaber knew or should have known was physically helpless or mentally incapacitated. The Deputy Attorney General then pointed out that the psychological evaluations submitted to the Board agree that Dr. Gaber's perception of events was so distorted that he perceived the victim to be a consenting partner. The Deputy Attorney General argued that the Board should be concerned about Dr. Gaber's perceptions. Additionally, the Deputy Attorney General suggested that whether Dr. Gaber poses a risk of harm to patients is not the only issue;

rather the Board should consider that Dr. Gaber was convicted of a serious crime and given a significant sentence. Finally, the Deputy Attorney General reminded the Board that the Judge, when sentencing Dr. Gaber, found that Dr. Gaber violated his position of trust.

The Board conducted its deliberations in Executive Session on January 4, 1989 and announced its decision in Public Session on that same date. This Order memorializes the Board's decision announced in Public Session on January 4, 1989.

FINDINGS OF FACT

On consideration of the record herein, the Board makes the following findings of fact:

1. Robert A. Gaber, D.M.D., is a licensed dentist in the State of New Jersey and has been so licensed at all times pertinent hereto.

2. On or about July 1, 1988 Robert A. Gaber, D.M.D. was convicted of the crime of sexual assault, a second degree crime, in violation of N.J.S.A. 2C:14-2c(2). More specifically, Dr. Gaber was found guilty by a jury of committing the crime of sexual assault by committing an act of sexual penetration upon L.G. while L.G. was one whom Robert A. Gaber knew or should have known was physically helpless or mentally incapacitated.

3. On or about July 1, 1988, Robert A. Gaber, D.M.D., was convicted of the crime of criminal sexual contact, a fourth

degree crime, in violation of N.J.S.A. 2C:14-3b. More specifically, Dr. Gaber was found guilty by a jury of committing the crime of criminal sexual contact by committing an act of sexual contact with L.G. while L.G. was one whom Robert A. Gaber knew or should have known was physically helpless or mentally incapacitated.

4. On or about September 23, 1988, Judge Laurence C. Stamelman, Superior Court, Monmouth County, sentenced Dr. Gaber to a term of four (4) years in prison; Dr. Gaber is eligible for parole in or about October of 1989.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

1. Dr. Gaber's convictions of the crimes of sexual assault, in violation of N.J.S.A. 2C:14-2(c), and criminal sexual contact, in violation of N.J.S.A. 2C:14-3b, constitute convictions of crimes of moral turpitude.

2. Dr. Gaber's convictions of the crimes of sexual assault, in violation of N.J.S.A. 2C:14-2(c), and criminal sexual contact, in violation of N.J.S.A. 2C:14-3b, constitute convictions of crimes relating adversely to the profession of dentistry.

DISCUSSION

Dr. Gaber, by his own admission, has been convicted of crimes (sexual assault and criminal sexual contact) of moral turpitude and crimes relating adversely to the practice of dentistry. The mere recitation of these phrases, however, cannot express the extent and depth of the Board's view of Dr. Gaber's conduct. Dr.

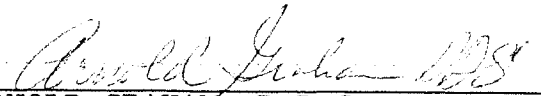
Gaber's license to practice dentistry placed him in a position of trust. Patients, such as the victim of the sexual assault in this matter, go to a licensee with the utmost confidence in placing themselves and their health in the professional's charge. Dr. Gaber by his conduct in this matter has utterly and totally violated his position of trust. He imposed his own personal and intimate desires on an individual who was physically and/or mentally vulnerable by virtue of the sedating agents which had been administered to her. Such conduct shocks the collective conscience of the Board. While the Board is cognizant of the psychological evaluations which portray this incident as an isolated event which is not likely to recur, the Board also reads all of these evaluations to say that continued psychotherapy is an essential element of that prediction; i.e., in order for such an incident not to recur, psychotherapy should be continued. The public should not have to run the risk that such conduct might recur because therapy might be terminated or might ultimately prove unsuccessful. Finally, it is appropriate for this Board to discipline a licensee for conduct, such as Dr. Gaber's, which undermines the public's confidence in the integrity of the profession. Consequently, and for the foregoing reasons,

IT IS ON THIS ^{1st} DAY OF Feb., 1989,

ORDERED THAT:

The license of Robert A. Gaber, D.M.D., to practice dentistry in the State of New Jersey is hereby revoked. Dr. Gaber may not reapply for licensure for five (5) years from the

date of this Order. At such time as Dr. Gaber reapplies for licensure, he must prove to the Board's satisfaction that he is physically, mentally and professionally competent to practice dentistry. This Order is effective January 4, 1989.



ARNOLD GRAHAM, D.D.S.
PRESIDENT
STATE BOARD OF DENTISTRY